

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CURLIN PENNICK III,,

CASE NO. 17-5152 RJB-TLF

Plaintiff,

ORDER ON REPORT AND RECOMMENDATION

ERIN LYSTAD, ROBERT WEBER, and
SARA SMITH,

Defendants.

THIS MATTER comes before the Court upon review on the Plaintiff's Motion for Extension of Time (Dkt. 49) and the Report and Recommendation of U.S. Magistrate Judge Theresa L. Fricke (Dkt. 48). The Court has considered the Report and Recommendation, objections, if any, and the remaining record.

Plaintiff filed this 42 U.S.C. § 1983 case, asserting that Defendants violated his constitutional right to be free from cruel and unusual punishment when they refused to prescribe him Naphazoline eye drops and failed to refer him to an outside optometrist. Dkt. 28.

1 On June 20, 2018, the Report and Recommendation was filed, and recommends that: (1)
2 the Defendants' motion for summary judgment be granted, (2) the claims dismissed, and (3) the
3 Defendants' motion that the dismissal count as a strike under 28 U.S.C. 1915 (g) be denied. Dkt.
4 48. The Report and Recommendation was noted for July 6, 2018.

5 On July 5, 2018, Plaintiff filed the pending Motion for Extension of Time to file his
6 objections by July 19, 2018. Dkt. 49. Defendants do not oppose the motion. Dkt. 50.

7 On July 9, 2018, the Report and Recommendation was renoted for consideration for July
8 20, 2018. Dkt. 51.

9 On July 18, 2018, Plaintiff filed a Notice of Appeal. Dkt. 52. Plaintiff's notice states that
10 it is appealing the July 10, 2018 "Judgement in a Civil Case." *Id.*

11 The facts and procedural background are in the Report and Recommendation (Dkt. 48)
12 and are adopted here.

13 **Notice of Appeal.** Generally, once a notice of appeal is filed from a final judgment, the
14 district court is divested of jurisdiction. *Laurino v. Syringa General Hosp.*, 279 F.3d 750, 755
15 (9th Cir. 2002); *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58- 59 (1982). This
16 general rule does not apply here because no final judgment has been entered.

17 Plaintiff has filed several cases in this district, including *Pennick v. Coleman*, Western
18 District of Washington case number 17-6001 RBL-JRC. A final judgment was entered in
19 *Pennick v. Coleman* on July 10, 2018 (*Id.*, Dkt. 37); raising the question of whether Plaintiff
20 inadvertently entered the wrong caption and case number in the Notice of Appeal filed in this
21 case. In any event, Plaintiff's notice of appeal does not divest this Court of jurisdiction to
22 consider the pending motion or the Report and Recommendation.

1 **Motion for Extension of Time.** Under Fed. R. Civ. P. 6 (b), the Court may extend
2 deadlines for good cause. Plaintiff has shown good cause for an extension of time to file his
3 objections to the Report and Recommendation. Plaintiff's Motion for Extension of Time (Dkt.
4 49) should be granted.

5 **Report and Recommendation.** The Report and Recommendation (Dkt. 48) should be
6 adopted for the reasons stated therein. Although Plaintiff sought extra time to file them, he did
7 not file any objections. All claims should be dismissed. The dismissal should not count as a
8 strike under 28 U.S.C. § 1915 (g). This case should be closed.

9 **ORDER**

10 It is **ORDERED** that:

11 • Plaintiff's Motion for Extension of Time (Dkt. 49) **IS GRANTED**;

12 • The Report and Recommendation (Dkt. 48) **IS ADOPTED**;

13 • The claims asserted in the case **ARE DIMISSED WITH PREJUDICE**;

14 • This dismissal **DOES NOT COUNT** as a strike under 28 U.S.C. § 1915 (g); and

15 • This case **IS CLOSED**.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address.

18 Dated this 30th day of July, 2018.

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21 ROBERT J. BRYAN
United States District Judge